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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,590	06/18/2001	Renee Frengut	3313/01334	1985

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EXAMINER
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BOYCE, ANDRE D

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/883,590

**Applicant(s)**

FRENGUT, RENEE

**Examiner**

Andre Boyce

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-18,21,22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-18,21,22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 2, 2003 has been entered.
2. Claims 1, 3, 4, 12, 21, 22, 24, and 25 have been amended. Claims 2, 19, 20, 23, and 27-31 have been canceled. Claims 1, 3-18, 21, 22, and 24-26 are pending.
3. The previously pending objection to the specification for the addition of new matter has been withdrawn.  
  
The previously pending rejection to claim 4 under 35 USC § 112 has been withdrawn.

### ***Claim Objections***

4. Claims 12 and 21 are objected to because of the following informalities:  
  
"Selecting..." (claim 12) and "A..." (claim 21) are now capitalized, which is grammatically incorrect and wasn't indicated as amendments to the claims.  
  
Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 3, 4, 7, 11-13, 16-18, 21, 22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock (US 2002/0072955), in view of Joao (US 2002/0108125), in further view of Davis (USPN 6,256,663).

As per claim 1, Brock discloses a programmed computer, a method for dynamically selecting a set of candidates over a distributed computer network for inclusion in a market research group (gathering demographic information, see page 8, ¶ 0085), comprising, the steps of: (a) acquiring market research data on potential candidates (standardized survey), the potential candidates connecting to the programmed computer across the distributed computer network; (c) evaluating the acquired market research data against a template (i.e., project parameters, see page 5, ¶ 0059); (d) selecting a set of candidates in response to the evaluating step (respondents designated for a particular focus group, see page 6, ¶ 0063), and the set of candidates being fewer than the set of potential candidates (all pre-existing respondents) being selected to fit the template in accordance with a predefined preference, and (e) permitting additional market research data from additional potential candidates (creating a new respondent 90, see page 6, ¶ 0063) to be acquired across the distributed computer network.

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Brock does not explicitly disclose (b) providing a set of candidates with an audio/video capture mechanism that is connectable to a machine that permits two-way communication across the distributed computer network, the set of candidates comprising a first portion of the set of potential candidates. Joao discloses a communication device 10L for facilitating two-way audio and video communication between a participant and user 20, and/or any other individual, user, or viewer of the system (§ 0118). Neither Brock nor Joao disclose (f) repeating steps (b) through (d), so that the permitting step acquires market research data until a time certain, the evaluating step evaluates the market research data at one or more given times which occur before the time certain, and the selecting step dynamically selects the set of candidates so as to fit the predefined preference at each given time and optimally fit the predefined preference at the time certain. Davis discloses that once a suitable number of pre-qualified potential respondents (i.e., set of candidates that fit a predefined preference at one or more given times, see column 5, lines 8-10) are identified, further qualification done via a screening survey based upon specifications established by the client, wherein successfully screened, pre-qualified potential respondents are invited to participate (i.e., optimally fit the predefined preference at a time certain, the start of the focus group, see column 5, lines 15-20). Brock, Joao, and Davis are concerned with effectively creating and administering on-line focus groups, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include providing a set of candidates with an audio/video capture mechanism that is connectable to a machine that

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permits two-way communication across the distributed computer network, the set of candidates comprising a first portion of the set of potential candidates and repeating the steps so that the permitting step acquires market research data until a time certain, in the Brock method, as seen in Joao and Davis, respectively, as an effective means of determining and qualifying potential respondents in the Brock system that meet the client specifications.

As per claim 3, Brock discloses an image of the potential candidate (video link capable of viewing the focus group/respondents, ¶ 0052).

As per claim 4, Brock discloses the additional step of conducting a market research study over the distributed computer network with the set of participants, the set of participants comprising a first portion of a set of candidates (focus group, see page 6, ¶ 0064).

As per claim 7, Brock discloses the additional conducting step of displaying a stimulus (web page) to the participants across the distributed computer network and, receiving participant response (rating of web page) to the stimulus across the distributed computer network (see page 6, ¶ 0066).

As per claim 11, Brock discloses the additional step of disseminating information between the set of candidates and a client at the given time (real-time or at a later time in the form of a report, see page 5, ¶ 0056).

As per claim 12, Brock discloses method for conducting a market research study from a host machine over a distributed computer network (see Figure 25), comprising, the steps of: selecting a set of candidates to participate in a market

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research study, the set of candidates being fewer than all candidates (i.e., respondents for a particular focus group, see ¶ 0062), inviting the set of candidates (respondents) to the market research study conducted during a predetermined time interval and conducted over a distributed computer network (internet 20), during the predetermined time interval in substantially real time; exhibiting a stimulus to the participants; and accumulating (collecting) participant responses to the stimulus over the distributed network at the host (see page 10, ¶ 0106).

Brock does not explicitly disclose the set of candidates being selected so as to fit a predefined preference of a template at each of one or more given times and being selected so as to optimally fit the predefined preference at a time certain which occurs after the given times. Davis discloses pre-qualified potential respondents (i.e., set of candidates that fit a predefined preference at one or more given times, see column 5, lines 8-10) further qualified via a screening survey based upon specifications established by the client, wherein successfully screened, pre-qualified potential respondents are invited to participate (i.e., optimally fit the predefined preference at a time certain, the start of the focus group, see column 5, lines 15-20). Neither Brock nor Davis disclose wherein the candidates (respondents) access the host and/or each other using a respective user machine interface having an audio/video two-way communication mechanism connected thereto; initiating two-way audio/video communication between and among the host and/or the user machines. Joao discloses a communication device 10L for facilitating two-way audio and video communication between a participant and user 20, and/or any other

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individual, user, or viewer of the system (§ 0118). Brock, Joao, and Davis are concerned with effectively creating and administering on-line focus groups, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the set of candidates being selected so as to fit a predefined preference of a template at each of one or more given times, and wherein the candidates (respondents) access the host and/or each other using a respective user machine interface having an audio/video two-way communication mechanism connected thereto; initiating two-way audio/video communication in Brock, as seen in Davis and Joao, respectively, as an effective means of determining and qualifying potential respondents in the Brock system that meet the clients specifications.

As per claim 13, Brock discloses the comparing step performed throughout the market research study to verify participant presence (respondents forced to provide comments as condition of progressing, see page 7, § 0078).

As per claim 16, Brock discloses the additional step of selecting groups of participants for a predetermined stimulus, wherein the predetermined stimulus is unique to the participant group (focus group, see page 6, § 0064).

As per claim 17, Brock discloses the additional step of dynamically selecting a particular stimulus in response to prior participant responses (survey of various attributes of web site to be studied, see page 8, § 0085).

As per claim 18, Brock discloses the additional step of tabulating (compiling) results of the market research study (see page 10, § 0106).



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Claim 21 is rejected based upon the rejection to claim 12, since it is the system claim corresponding to the method claim.

As per claims 22 and 24-26, Brock discloses a sponsoring client device having distributed computer network access wherein a sponsoring client accessing the market research study at a given time observes the submitted moderator stimuli, the submitted user responses and a user working from the user device observes an audiovisual image of the user, and a set of submitted participant responses (client computer 26 capable of viewing a video link of the focus group/respondents, ¶0052). Brock does not disclose and audio/video two-way communications between and among one or more users and the moderator. Joao discloses a communication device 10L for facilitating two-way audio and video communication between a participant and user 20, and/or any other individual, user, or viewer of the system (¶0118). Brock and Joao are both concerned with effectively creating and administering on-line focus groups, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include audio/video two-way communications between and among one or more users and the moderator in the Brock system, as an effective means of observing the reactions of the respondents.

7. Claims 5, 6, 8, 9, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock (US 2002/0072955), in view of Joao (US 2002/0108125), in

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further view of Davis (USPN 6,256,663), as applied to claims 1 and 12, in further view of Thomas (US 2002/0002482).

As per claims 5, 9, and 14, Brock does not disclose the additional steps of: paying each participant a first sum for participating in the market research study; and, paying a non-overlapping remainder portion of the set of candidates a second sum which is less than the first sum. Thomas discloses incentives for participants, including money (see page 2, ¶ 0029). Both Brock and Thomas are concerned with the effective collection of electronic information, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include paying each participant a first sum for participating in the market research study; and, paying a non-overlapping remainder portion of the set of candidates a second sum which is less than the first sum in Brock to provide an incentive for respondents, thus making the method more effective.

As per claim 6, Brock discloses the additional steps of: acquiring an image of each participant during the course of the conducted market research study (video link capable of viewing the focus group/respondents, ¶ 0052). Brock does not disclose comparing each participant image to the potential candidate image acquired with the market research data, wherein the step of paying each participant comprises paying each participant for which the comparing step results in a match. However, Brock discloses each respondent having a specified ID set up by the moderator (see page 6, ¶ 0064), and Thomas discloses incentives for participants, including money (see page 2, ¶ 0029). Both Brock and Thomas are concerned with

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the effective collection of electronic information, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include comparing each participant image to the potential candidate image, wherein the step of paying each participant comprises paying each participant for which the comparing step results in a match, in the Brock method as an alternate means of verifying the identity of the respondent, and providing an incentive for the respondent, thus making the method more effective.

As per claim 8, Brock discloses the comparing step performed throughout the market research study to verify participant presence (respondents forced to provide comments as condition of progressing, see page 7, ¶ 0078).

8. Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock (US 2002/0072955), in view of Joao (US 2002/0108125), in further view of Davis (USPN 6,256,663), in further view of Thomas (US 2002/0002482) as applied to claim 7 above, in further view of Levine (USPN 6,385,590).

As per claims 10 and 15, Brock does not disclose the additional step of officiating a follow-up interview with a participant, wherein the moderator displays additional stimulus and receives additional participant response in response to the additional stimulus. Levine discloses at least one participant presented with additional stimuli to test for a delayed impact (see column 7, lines 45-51, 60-62). Both Brock and Levine are concerned with the effect of various stimuli on respondents, therefore it would have been obvious to one having ordinary skill in the art at the time the

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invention was made to include a follow-up interview with a participant in Brock, as seen in Levine, to collect additional respondent information, thus making the system more effective through further data compilation and analysis.

### ***Response to Arguments***

9. In the Remarks, Applicant argues that neither Brock nor the other cited references suggest or disclose the limitations of claim 2, which are now incorporated into claims 1, 12, and 21. The Examiner submits Joao is disclosing those limitations, as seen in the above rejection.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Katz et al (USPN 6055513) disclose the intelligent selection and proffer of products, services, or information to a user.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number

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for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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